

**State of California
State Water Resources Control Board
Division of Clean Water Programs**

**UNDERGROUND STORAGE TANK CLEANUP FUND (USTCF) TECHNICAL REVIEW
GUIDANCE DOCUMENT NO. 1**

THE 3-BID REQUIREMENT

GENERAL COMMENTS

The law which established the UST Cleanup Fund (Fund) requires that claimants who contract for corrective action (cleanup) work must receive multiple bids for future work if they file a claim against the Fund. The regulations developed to implement this law specifically requires three bids for this work.

IMPORTANT: The effective date of the regulations was December 2, 1991. Any work conducted after that date must be supported by three bids, except in the following circumstances:

- (1) Work already under written contract as of December 2, 1991. This includes work under contract but not yet started, and continuation of work underway, if covered by a contract. For example, a contract for investigation activity already underway may be extended without going to bid to cover additional investigation work if that work is required by the regulatory agency. In no case, shall work move from investigation to cleanup without going to bid.
- (2) The first \$10,000 of eligible corrective action costs (does not include tank removal, upgrade or replacement).
- (3) Corrective action work conducted by local agency personnel.

THE REQUIREMENTS

Section 2812.1 of the Underground Storage Tank Cleanup Fund Regulations dated November 27, 2000 states that: (a) All claimants must follow applicable state laws and regulations in procuring consultant/contractor services and must ensure that such services are obtainable from qualified firms at a reasonable cost and that the costs are necessary. (b) Where three bids are solicited but not obtained by the claimant, final approval may be given by the Fund provided that Fund staff finds that, based on information submitted demonstrates the three-bid requirement is unnecessary, unreasonable, or impossible to comply with under the circumstances pertaining to a particular claim. (c) Where three bids have been obtained, the Fund will generally reimburse eligible costs limited to the low bid. However, we do not require an award to the low bidder, since the claimant has the ultimate responsibility in selecting whom they wish to award to.

For example, if the low bidder is not qualified to do the work, if an obvious "low ball" bid is submitted by the low bidder or if the claimant finds that the low bidder has a poor performance record, these would be some instances where a claimant would not want to award to the low bidder. Additionally, if the claimant wanted to award to the second low bidder even though the low bidder was qualified in every respect, they could do so. However, in this case, reimbursement would be limited to the low bid. (d) When the corrective action work is complete, all work must be acceptable to the appropriate regulatory agencies in order to be determined eligible for USTCF reimbursement.

NOTE: When the term "bid" is mentioned, it is meant to mean estimates and not formal sealed bids.

IMPORTANT POINTS FOR CLAIMANTS TO REMEMBER IN OBTAINING BIDS

- Although corrective action is defined in four distinct phases (Article 11 in Chapter 16 of the Underground Storage Tank Regulations, the Fund recognizes that for practical purposes there are two distinct efforts, namely, contamination delineation (investigation) and contamination cleanup. Therefore, the Fund requires that as a minimum, investigation and cleanup be bid separately. In other words, as a minimum, the claimant must receive three bids on the investigation effort (Phases I and II) and three bids on the actual cleanup effort (Phases III and IV).
- After the claimant receives an order to conduct cleanup work, a work plan must be submitted to the local regulatory agency. These work plans must be reviewed and approved by the local regulatory agencies and should be the basis of the bid document which will be given to the prospective bidders. The bid document should contain unit/price and quantity requirements to insure comparable bid responses.
- After the consultant/contractor completes Phases I and II (investigation phases), they are required to submit to the local regulatory agency, a Corrective Action Plan(CAP). The CAP includes among other things, (1) the results of the investigation effort (vertical and horizontal delineation of contamination); (2) recommended cleanup method; and (3) cost estimate of cleanup. This document (the CAP) then becomes the basis for bidding the cleanup phases III and IV.
- The claimant has the flexibility to solicit bids from whom he chooses. There is nothing to prevent the claimant from soliciting additional bids above the required minimum three bids to insure that the final selection is made from firms which are qualified and competent to do the work. The requisite bids must conform to the workplans/corrective action plans approved by the local regulatory agency.
- The Fund has supplied every claimant with a copy of the Petroleum Underground Storage Tank Cleanup Fund Corrective Action Guide (CAG). This document has been prepared to answer many of the questions regarding bid documents and the bidding process. The CAG should be read cover to cover.

CLAIMANT'S DIRECT RESPONSIBILITY

Soliciting bids for corrective action work is similar to obtaining estimates to conduct work on your house or automobile. It is recognized however, that while work on your house or automobile can be defined in

definitive terms, the same cannot be said for corrective action work and in particular, the investigation effort since the work cannot be precisely defined. However, the claimant can take the following steps and do their homework in insuring that they have made their best faith effort in obtaining services from qualified contractor/consultants and at reasonable prices:

- Meet with the regulatory agency directing the cleanup to gather input regarding scope of work and listing of potential consultants/contractors.
- After selecting several potential contractors, thoroughly investigate their performance record.
- Use common sense and don't be afraid to ask questions.

For any questions regarding the above or any other technically related questions, please contact Bob Trommer of the USTCF Technical Review Unit at (916) 341-5684.